

GEORGETOWN LAW INSTITUTE FOR PUBLIC REPRESENTATION

August 24, 2012

VIA ELECTRONIC SUBMISSION

Ms. Marlene Dortch Secretary Federal Communications Commission 445 Twelfth Street, S.W. Washington, D.C. 20554

Re: Tribune Company, Debtor-in-Possession, MB Docket No. 10-104

Dear Ms. Dortch:

We are writing on behalf of Free Press, Media Alliance, NABET/CWA, National Hispanic Media Coalition, Office of Communication of the United Church of Christ, Inc. and Charles Benton ("Public Interest Petitioners") to renew and update our challenge to the proposed assignment of licenses held by the Tribune Company, Debtor-in-Possession, to Reorganized Tribune.

Tribune initially filed its applications for assignment of a large number of licenses in April 2010, requesting waivers of the newspaper-broadcast ownership rule (NBCO) for Tribunes' television stations in New York, Chicago, Los Angeles, Miami, and Hartford. Public Interest Petitioners and several other filed Petitions to Deny in June 2010. Since then, Tribune has summited numerous amendments to its applications. Because the Bankruptcy court did not approve the plan of reorganization in the summer of 2010, the Media Bureau suspended the

Ms. Marlene Dortch August24, 2012 Page 2 of 8

"clock" for deciding on the applications. In July 2012, Tribune advised the Commission that the bankruptcy court issued and order approving the plan of reorganization and no further changes in its applications were required. Thus, the Media Bureau restarted the "clock" effective August 2, 2012.

Tribune has failed to make the showing required by the applicable waiver standard

The most significant change that has occurred since Tribune filed the initial applications is that the standard to be applied to Tribune's five requests for waivers of the Newspaper-Broadcast Cross-Ownership Rule, has changed. The waiver standard adopted by the FCC under Chairman Martin was vacated and remanded by the US Court of Appeal for the Third Circuit in *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) ("*Prometheus II*"). As a result, the FCC must apply the same waiver standard that it articulated when it adopted the NBCO in 1975.

Under the 1975 waiver standard, Tribune has the burden to demonstrate that the purpose of the rule -- that is diversity, competition and localism -- would be better served by waiving the rule rather than applying it. Although Tribune had filed much paper in this proceeding, it has failed to make the requisite showing for any waivers of the NBCO. Thus, Public Interest Petitioners request that the FCC require Tribune to divest sufficient properties to comply with the NBCO before it approves the transfer as it did in approving the Comcast-NBC merger. See Applications of Comcast Corp., General Elec. Co. and NBC Universal, Inc., 26 FCC Rcd 4238, 4344-47 (2011).

In each of the five markets where Tribune has cross-ownerships, local news diversity would be furthered if different entities controlled the broadcast stations and the daily newspaper. In Hartford, for example, Tribune's two television stations, which operate as a single employment unit, are located in the same building with the Hartford *Courant*. A single individual has management responsibility for all print, broadcast and internet operations. Amendment to Ex. 16, FCC Form 314, WTIC-TV and WCCT-TV, Hartford, CT, March 2012 at 14. Such combinations clearly diminish diversity, competition, and localism.

Further, because the broadcast stations are all located in markets with large minority populations, requiring divestiture could provide an opportunity for minority ownership and better service to underserved communities. For example, in Chicago, Tribune's WGN-TV airs only two programs addressing issues of specific concern to Chicago's African-American and Hispanic populations, and they are broadcast on alternate Saturday mornings at 5:30 a.m. *See* Amendment to Ex. 16, FCC Form 314, WGN-TV, Chicago, March 2012 at 20 ("Amended Waiver").

Recent events undermine Tribune's already inadequate arguments for waivers

In the Amended Waiver, Tribune contends that the Reorganized Tribune is "entitled to a permanent waiver" under the 1975 standard and that its initial waiver showing is even more compelling in light of the "ever-expanding competition and media diversity and growing economic pressures that newspaper and broadcast stations currently face." Amended Waiver at

Ms. Marlene Dortch August24, 2012 Page 3 of 8

42. ¹ Tribune claims, without citation, that the *Information Needs of Community Report* ("*INOC Report*") "correctly concluded that allowing combinations of newspaper and broadcast properties can produce synergies that result in increases in the quantity and improvement in the quality of news and other information available to consumers in the local marketplace." *Id.* at 32. ² In fact, the *INOC Report* made no such conclusion.

To the contrary, the INOC Report is quite critical of "One-Man Bands," a term "defined local TV news managers as journalists who do it all: conduct interviews, shoot video, and edit their own stories." *INOC Report* at 89. It finds that while this practice may be efficient, most stations have not used the savings from these efficiencies to hire more reporters. The main consequence is that "reporters who once just reported the news now have many other tasks, and more newscasts to feed, so they have less time to research their stories." Id. at 89-90. This seems to be the case with Tribune. For example, in Chicago, WGN-TV and Tribune's local cable news channel, CLTV, maintain studios in the Chicago Tribune's newsroom so that they can originate video reports and news interview segments featuring Chicago Tribune reporters. Amended Waiver at 16. In addition, many Chicago Tribune reporters and photographers carry video cameras and make their videos available to WGN-TV and CLTV, as well as three Tribune websites. Id. at 17. Moreover, the assignment editors and news managers of WGN-TV, WGN(AM), CLTV, the *ChicagoTribune*, and chicagotribune.com, hold daily conference calls each morning and throughout the day to coordinate news coverage. Id. at 22.3 Thus, far from using the alleged synergies of common ownership to improve the quality of coverage of local affairs, Tribune's examples actually demonstrate how it runs the same stories on multiple outlets to the detriment of diverse views and coverage.

Recent disclosures surrounding Tribune's effort to outsource its coverage of local news provide further evidence that Tribune is being operated to maximize profits without regard to the quality of local news coverage. In April 2012, Tribune contracted with a company called Journatic, LLC to take over the production of TribLocal. TribLocal is the Chicago Tribune's

¹ Tribune makes the same arguments in amendments to Ex. 16 for all five applications. *See, e.g.*, Amendment to Ex. 16, FCC Form 314, KTLA(TV) Los Angeles, March 2012, at 31 ("LA Amended Waiver"). The only difference is in the description of how the combinations have allegedly served the public interest.

² Steven Waldman, *The Information Needs of Communities* (2011)("*INOC Report*"). Tribune also misquotes the *INOC Report* to suggest the public is better served by *fewer* media outlets. Amended Waiver at 43. The actual passage reads: "In an earlier day, it was reasonable to assume that a diversity of media outlets indicated generalized media health. What we have seen in Part One of this report is that a media market can simultaneously have a diversity of news and information outlets and yet a scarcity of local reporting." *INOC Report* at 312. Just because having many outlets may not ensure a sufficient number of reporters to cover important local issues does not mean that having fewer outlet would be better. Indeed, it is more likely in such cases that local reporting would become even more scarce.

³ See also LA Amended Waiver at 14 (*LA Times* reporters deliver reports on KTLA(TV) using stationary video cameras at the *Time's* headquarters, and also carry cameras that allow them to shoot and upload video for on-air broadcast; the *LA Times* uses KTLA(TV) videos on its website, and KTLA(TV) contributes stories and video for the *LA Time's* news blog.)

network of community web sites and print editions. Even though TribLocal was profitable,⁴ Tribune's contract with Journatic would allow Tribune to make more money and phase out about "[a]bout half of TribLocal's 40 staffers." Journatic, in which the Tribune Co. has invested an undisclosed amount, "employs 40 full-time staffers and hundreds of freelancers to provide content to media companies and marketers." Few of the freelancers reside in the Chicago area. Indeed, Journatic's CEO told a (real) reporter that "Being based in the community is not beneficial."

At the end of June 2012, Chicago public radio station WBEZ-FM's "This American Life" disclosed that Journatic was employing Filipino freelance workers to write stories under aliases. The publication of stories under false bylines is a clear breach of journalistic ethics. Even after confronted with this evidence, Tribune did nothing for almost two weeks, and only then, did it "suspend" use of Journatic's services. In the meantime, it was discovered that Journatic had used fake bylines on more than 350 stories published on behalf of the Houston Chronicle and that a sports story in the Deerfield TribLocal contained plagiarized and fabricated content."

On July 21, 2012, *Tribune* "decided to keep using Journatic, LLC, despite recent revelations about the way the local news provider has done business, the paper announced in a story and in a memo to staff." The *Tribune* explained that it would "try to help Journatic improve its practices," and it had hired a former editor to help implement changes at the company." In short, Tribune took the position that the business model of outsourcing local

⁴ Robert Channick, *Journatic to provide TribLocal suburban content*, Chicago Tribune, Apr. 23, 2012, available at http://articles.chicagotribune.com/2012-04-23/business/chi-tribune-replaces-triblocal-with-journastic-suburban-content-20120423.

⁵ *Id*.

⁶Andrew Beaujon, *Journatic founder: 'Being based in the community is not beneficial*,' available at http://www.poynter.org/latest-news/mediawire/171880/journatic-founder-this-is-the-purest-form-of-journalism-there-is/.

⁷ Robert Channick, *Tribune investigating ethics policy violation by content provider Journatic Company that provides content for TribLocal used false bylines, Chicago Tribune*, July 01, 2012, available at http://articles.chicagotribune.com/2012-07-01/business/ct-biz-0702-journatic-20120702_1_triblocal-websites-stories-bylines. According to this article, Journatic employs about 140 overseas contract workers, mostly in the Philippines, who gather information online and then format it for more than 200 U.S.-based writers and editors, including 60 full-time staffers. The foreign freelancers make as little as 35 cents per story item.

⁸Hazel Shelfield, Journatic busted for using fake bylines, Columbia Journalism Review, available at http://www.cjr.org/behind_the_news/media_start-up_journatic_buste.php.

⁹Phil Rosenthal, Chicago Tribune suspends use of Journatic, Chicago Tribune, July 13, 2012, available at http://articles.chicagotribune.com/2012-07-13/news/ct-chicago-tribune-suspends-use-of-journatic-07132012_1_weekly-print-editions-town-websites-editorial-ethics-policy.

¹⁰*Tribune sticks with Journatic*, available at

http://www.chicagobusiness.com/article/20120721/BLOGS08/120729961/tribune-sticks-with-journatic

¹¹ *Id*.

¹² *Id*.

Ms. Marlene Dortch August24, 2012 Page 5 of 8

news is desirable, and it plans to retain it.

If the impact of this decision was lost on Tribune, the same cannot be said of the *Tribune's* editorial staff. On July 26, some 90 *Tribune* reporters wrote an open letter to Editor Gerould W. Kern, saying that use of Journatic "threatens to jeopardize our credibility" and asking why the *Tribune* is "seeking to salvage its relationship with Journatic when as a matter of policy it declares zero tolerance for such behavior?" Tribune's conduct here provides further evidence that allowing the continued cross-ownership would be detrimental to the Commission's public interest goals of diversity and localism.

Tribune has not shown that it could not sell its television stations separately

Tribune has made no effort to show that it could not sell the stations or could do so only at a fire sale price. Indeed, recent press reports indicate that the new owners intend to split up the properties. For example, Crain's Business News reported that "[w]hen Tribune Co. exits bankruptcy under new owners next year, its flagship newspaper is likely to go on the sales block, but that's not all. A host of other Chicago assets in the Tribune media empire, from WGN Radio to *Chicago* magazine to the neo-Gothic Tribune Tower itself, could be offered to buyers who have circled the properties for years." Thus, requiring Tribune to come into compliance with the cross-ownership rule before approving the transfer is clearly feasible as well as in the public interest.

Nor should the Commission give any weight to Tribune's argument that compulsory divestiture is disruptive to the industry. Waiver Amend. at 43, citing 2010 Quadrennial Review, at ¶¶ 100, 114 ("2010 QR NPRM"). The NPRM acknowledgement of disruption was made in the context of a "proposal to grandfather ownership of existing combinations of television stations and newspapers that would conflict with the newspaper/broadcast cross-ownership rule by virtue of the change to a DMA-based approach." *Id.* at ¶100. In Tribune's case, the existing combinations in violation of the cross-ownership are not the result of any rule changes by the FCC. Rather they result from Tribune's own business decisions to continue operating under temporary waivers.

In voting 3 to 2 to approve the transfer of control of Tribune to Sam Zell in November 2007, the Commission required Zell "to come into compliance with the NBCO, in all markets but Chicago, either by selling the non-compliant properties or placing them in a divestiture trust within 6 months of the date of this order." Shareholders of Tribune Co., Memorandum Opinion

¹³Andrew Beaujon, Chicago Tribune staffers: Relationship with Journatic 'threatens to jeopardize our credibility,' July 26, 2012, available at http://www.poynter.org/latest-news/mediawire/182837/chicago-tribune-staffers-relationship-with-journatic-threatens-to-jeopardize-our-credibility/

¹⁴ Lynne Marek, *Tribune's bankruptcy exit could mean company breakup*, July 23, 2012, available at http://www.chicagobusiness.com/article/20120721/ISSUE01/307219974/tribunes-bankruptcy-exit-could-mean-company-breakup#ixzz22VpuBGPf.

Ms. Marlene Dortch August24, 2012 Page 6 of 8

&Order, 22 FCC Rcd 21266, 21273 (2007)("Zell MO&O"). The Commission explained: "In multiple-station, multiple-market merger transactions, such as the one presented here, it is not uncommon for the combined properties of the merged entity to create violations of the Commission's ownership rules in some markets. In these circumstances, the Commission has granted temporary waivers of its rules, including the NBCO rule, to permit an orderly disposition of assets and avoid forced sales." *Id.* at 21276-77. It further noted that its decision was consistent with it recent decision in *Shareholders of Univision*, giving the transferee six months to come into compliance with the NBCO rule in multiple markets. *Id.* at 21677.

However, the Commission also provided that "should applicants challenge today's decision in court, we grant a temporary waiver of the NBCO rule for the New York, Los Angeles, Miami, and Hartford markets. This waiver will last either for two years or until six months after the conclusion of the litigation, whichever is longer." *Id.* at 21285. ¹⁶ Since Tribune challenged the decision in the D.C. Circuit, and the litigation has not been concluded, Tribune has been able to expand a six month waiver to 45 month waiver and counting. ¹⁷

During this time, Tribune could have come into compliance with the rule, and it certainly should have done so before seeking an additional transfer of control. Tribune's stubborn refusal to come into compliance and to instead gamble that it would win on appeal or that the Commission would change the rule, provides no basis for the Commission to grandfather these combinations.

¹⁵ The Commission inexplicably granted Zell a permanent waiver for Chicago even though Tribune had requested only a temporary waiver. But in any event, this decision has no bearing on whether the Reorganized Tribune has made an adequate showing for a waiver.

¹⁶ Commissioner Copps and Adelstein issued vigorous dissents. Commissioner Copps explained that he was troubled because "Publicly, the Chairman claims to want only a 'modest' relaxation of the cross-ownership ban. Privately, he enlists Tribune as an accomplice to try and get the ban overturned in court." He added, "[a]lthough I object to the entire Order, I note that the permanent cross-ownership waiver in Chicago has absolutely no basis in the record or Commission precedent." 22 FCC Rcd at 21289. Commissioner Adelstein described the order as "a regulatory hostage taking – a desperate maneuver to use the Tribune transaction as a human shield, while the Commission marches down the treacherous path toward greater media consolidation." *Id.* at 21290.

¹⁷ *Tribune Co. v. FCC*, D.C. Cir. No. 07-1489. On January 22, 2008, Intervenors Office of Communication of the United Church of Christ, Inc. ("UCC") and Media Alliance ("MA") filed a motion to dismiss Tribune appeal on the grounds that 1) the court lacked jurisdiction to hear the case under Section 402(b)(3) of the Communications Act, which provides for jurisdiction only when a transfer application has been denied, 2) because Tribune received more relief than it requested, it has not suffered the requisite injury for standing under Article III, and 3) that the case was not ripe for judicial review. On May 7, 2008 the Court referred the motion to dismiss to the merits panel and held the case in abeyance pending resolution of petitions for reconsideration. Those petitions for reconsideration are still pending.

The Commission should act on the Petitions for Reconsideration of the Transfer of Control to Zell before acting on the applications to assign the licenses to Reorganized Tribune

Because neither the D.C. Circuit has ruled on Tribune's appeal nor has the FCC ruled on the Petitions for Reconsideration of the MO&O filed by UCC, Media Alliance, and Charles Benton, and others, the decision to approve the transfer to Zell is not final. As we argued in our June 2010 Petition to Deny, the best course of action would be for the Commission to reverse the Zell MO&O. If it did, Tribune-in-Bankruptcy would no longer control the licenses for the cross-owned stations, and they could not be transferred to Reorganized Tribune. Thus, the Commission could recover the licenses and make them available to others in a manner that would increase diversity, competition and localism.

If the Commission declines to reverse its decision approving the transfer of control to Zell, it should at least grant the relief requested by UCC and Media Alliance in their Petition to Deny with regard to standing. Even though UCC and Media Alliance submitted legally sufficient uncontested sworn declarations attesting to the fact that they had qualified members who resided in the cities where Tribune operated TV stations, the Zell MO&O denied them standing to challenge the transfers of control in Hartford, Chicago and Los Angeles because they had not also submitted declarations from members residing in those communities. This action was inconsistent with past Commission practice and flies in the face of established Commission policy to promote the participation of the public in Commission broadcast licensing matters. Thus, it is important that the Commission reverse this aspect of the decision.

The Commission Should Act on the Pending License Renewals before acting on the applications to assign the licenses to Reorganized Tribune

Citizen Petitioners also oppose Tribune's request to approve the transfer of licenses that have not yet been renewed. July 2012 Comprehensive Exhibit at 7. The license renewals still pending are 1) KTLA, in Los Angeles, challenged by Media Alliance in 2006; 2) WPIX, in New York, challenged by UCC in 2007, and 3) WTXX and WTIC-TV in Hartford, challenged by UCC in 2007. Tribune wrongly claims that its request to grant the transfer of licenses that have not been renewed is consistent with Commission policy to permit processing of multi-station transfers where 1) there are no unresolved basic qualifications issues; and 2) the transferee explicitly assents to standing in the stead of the transferor. Id. at 7-8 citing Shareholders of CBS Corporation, 16 FCC Rcd 16072, 16072-73. Clearly, Tribune's failure to come into compliance with the newspaper-broadcast cross-ownership rule before filing its renewal applications in 2006 and 2007, or to show that it meets the strict test for waiver, renders Tribune basically unqualified for renewal. In addition, the CBS case is easily distinguished because it involved only one of many licenses being transferred, and the outstanding issue (concerning a complaint about Howard Stern) would not result in the loss of the license even if meritorious. Here in contrast, licenses of five television stations are at stake, and in the absence of showing that Tribune meets the waiver standard, the FCC rules require that the renewals be denied.

Ms. Marlene Dortch August24, 2012 Page 8 of 8

Conclusion

For the reasons discussed above and in our 2010 Petition to Deny, Tribune has failed to make the showing necessary for temporary, much less permanent, waivers of the newspaper-broadcast cross ownership rule. Thus, we urge the Commission to require that Tribune divest sufficient properties to comply with the NBCO *before* it approves the assignment of liceneses. If the Commission nonetheless grants any waivers, they should be limited to the shortest possible time and limited to the purposes of allowing for an orderly divestiture. The Commission should make it clear that it will not grant any further extensions. Moreover, the Commission should not grant any waivers pending the outcome of the 2010 Quadrennial Review. Two earlier attempts by the Commission to alter the newspaper-broadcast cross ownership rule have been reversed by the Third Circuit Court. Whatever the Commission decides to do in the 2010 Quadrennial Review will undoubtedly be appealed and will not become final for years. Because the ownership limits have to be reviewed every four years, granting a temporary waiver contingent on the outcome of the rulemaking would be the effectively the same as a permanent waiver.

Respectfully submitted,

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